

CHAPTER 482
TRADEMARKS, PRINTS, LABELS, AND TRADE NAMES
REGISTRATION AND PROTECTION OF

SECTION

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§482-1 Definitions. As used in this chapter, unless the context otherwise requires:

"Person" means an individual, corporation, government, or governmental subdivision or agency, business trust, estate, trust, partnership, unincorporated association, two or more of any of the foregoing having a joint or common interest, or any other legal or commercial entity.

"Service mark" means a mark used by a person to identify services and to distinguish them from the services of others.

"Trade name" means a word or name used by a person to identify the person's business, vocation or occupation and distinguish it from the business, vocation or occupation of others.

"Trademark" means a mark used by a person to identify goods and distinguish them from the goods of others.

§482-2 Certificate. (a) Any person desiring to register any print, label, or trademark intended to be attached or applied to goods or manufactured articles or to bottles, boxes, or packages containing the goods or manufactured articles to indicate the name of the manufacturer, and any person desiring to register a service mark, or a trade name, may obtain a certificate of the registration of the print, label, trademark, service mark, or trade name in the manner hereinafter provided.

(b) Before any person may receive a certificate of registration of a print, label, or trademark, the person shall file in the office of the director of commerce and consumer affairs an application for the registration of the print, label, or trademark, with a declaration, certified by the applicant, stating that the applicant is the sole and original proprietor or the assign of the proprietor of this print, label, or trademark, and describing the goods or manufactured articles for which the print, label, or trademark is used, and stating the manner in which the print, label, or trademark is used. Before any person may receive a certificate of registration of a service mark or trade name, the person shall file in the office of the director an application for the registration thereof, with a declaration, certified, as aforesaid, stating that the person is the sole and original proprietor of the service mark or trade name, or the assign of the proprietor and setting forth the nature of the business in which the service mark or trade name is used. The application shall be accompanied by two exact copies of the print, label, trademark, service mark, or trade name. Upon filing the application, the applicant shall pay to the director a fee of \$25, of which \$15 shall be deposited in the special fund authorized by section 415-128, and the balance deposited to the general fund of the State. A special handling fee of \$10 for expediting registration of a trade name, print, label, trademark, or service mark shall be assessed by the department. All special handling fees shall be credited to the special fund authorized by section 415-128.

§482-3 Record, issuance and effect of certificate. (a) Upon receiving the application accompanied by the fee, the director of commerce and consumer affairs shall cause the print, label, trademark, service mark, or trade name to be recorded and shall issue to the applicant a certificate of registration under the seal of the director; and the certificate of registration shall be constructive notice to all persons of the applicant's claim of the use of the print, label, or trademark, service mark, or trade name throughout the State, for the term of one year from the date thereof; provided that the director shall not register any print, label, trademark, service mark, or trade name which is substantially identical with any registered print, label, trademark, service mark or trade name or with the name of any corporation or partnership registered in accordance with chapters 415, 415A, 415B, 425, and 425D; provided further that the print, label, trademark, service mark or trade name is continued in actual use by the applicant in the State or elsewhere in the United States or is registered in the name of the applicant in the patent and trademark office of the United States. The acceptance of an application and issuance of a certificate of registration by the director shall not abrogate or limit any common law or other right of any person to any corporation or partnership name, trade name or trademark.

(b) The registration of a print, label, trademark, service mark, or trade name may be renewed at any time during a period of its registration for additional periods of ten years from the date of renewal by the filing of an application for renewal of registration in the form as the director may provide. Upon filing the application for renewal the applicant shall pay the director a fee of \$25, of which \$15 shall be deposited in the special fund authorized by section 415-128, and the balance deposited to the general fund of the State.

(c) The director may make, amend and repeal such rules as may be necessary to carry out the purposes of this section.

[§482-3.5] Penalty. (a) Any person who signs and certifies as correct any application filed pursuant to this chapter, knowing the same to be false in any material particular, shall be fined not more than \$5,000.

(b) Any person who negligently but without intent to defraud signs and certifies as correct any application filed pursuant to this chapter, which application is false in any material particular, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine not exceeding \$500.

§482-4 Certain prints, labels, trademarks, service mark, union labels and trade names not to be adopted or used. (a) It shall be unlawful for any person to adopt or use a print, label, trademark, service mark, or trade name which is identical to or confusingly similar with any registered print, label, trademark, service mark, or trade name, or the name of any partnership or corporation registered in accordance with the laws on partnerships or domestic or foreign corporations.

(b) When a bona fide labor union, or association of employees has adopted a device in the form of a label, brand, mark, name, or other character for the purpose of designating the products of the members of the union or association and the device has been registered pursuant to sections 482-2 and 482-3, then it shall be unlawful for any person to adopt, print, distribute, or otherwise use the device or one so similar as to be confused therewith. Any person, except the director of commerce and consumer affairs, found to be in violation of this subsection may, in addition to any other penalty assessed or otherwise imposed by law, be required to pay all costs and attorney's fees incurred in seeking enforcement of this subsection, and may be ordered by the court to pay damages to the bona fide labor union or association of employees involved in such amount as may be determined by the court; provided that the damages ordered shall not be less than \$250 nor more than \$5,000.

§482-5 Penalty. Any person using such identical or similar print, label, trademark, service mark or trade name as set forth in section 482-4, shall be fined not more than \$1,000.

§482-6 Revocation of certificate; nonuse. If any print, label, trademark, service mark or trade name is not used by the registrant in accordance with the declaration either in the State or elsewhere in the United States for a period of three hundred and sixty-five consecutive days, and the print, label, service mark, trademark, or trade name has not been registered in the name of the registrant in the patent and trademark office of the United States, the certificate of registration shall be subject to revocation.

Any person desiring such revocation shall file a verified petition in the office of the director of commerce and consumer affairs, setting forth facts indicating such nonuse for a period of three hundred and sixty-five consecutive days immediately preceding the date of the filing of the petition, and alleging the nonregistration in the patent and trademark office of the United States. The petitioner shall at the

petitioner's expense notify the registrant of the hearing in the manner prescribed by the director and section 91-9.5, and the registrant shall be given the opportunity of a full hearing in accordance with chapter 91.

After granting an opportunity for hearing to the petitioner and the registrant, the director shall grant or deny the petition for revocation, as the facts shall warrant.

§482-7 Application of law; reissue on nonuser. Sections 482-1 to 482-9 are applicable to all registrations filed in the office of the director of commerce and consumer affairs; the intent hereof being that all prints, labels, trademarks, service marks, or trade names not used by the applicant in the State or elsewhere in the United States and not registered in the name of the applicant in the patent and trademark office of the United States may be immediately reissued to such applicant who is actually using the same.

The fact that a print, label, trademark, service mark, or trade name has not been used in the State for a period of one year shall be prima facie proof of the fact that the same has not been used elsewhere for such period.

§482-8 Revocation of certificate; ownership. Any person claiming to be the owner of a print, label, service mark, trademark, or trade name for which a certificate of registration pursuant to this chapter has been issued to any other person shall file a verified petition in the office of the director of commerce and consumer affairs for the revocation of the registration of such print, label, service mark, trademark, or trade name. The petition shall set forth facts in support of the ownership by such petitioner of such print, label, service mark, trademark, or trade name and in support of the claim of the petitioner that the certificate of registration should be revoked.

The petitioner shall at the petitioner's expense notify the registrant of the hearing in the manner prescribed by the director and section 91-9.5 and the registrant shall be given the opportunity of a full hearing in accordance with chapter 91.

After granting an opportunity for hearing to the petitioner and the registrant, the director shall grant or deny the petition for revocation, as the facts warrant.

§482-9 Appeal. Any person aggrieved by any action of the director of commerce and consumer affairs under this chapter in issuing a certificate of registration of a print, label, trademark, service mark, or trade name or in revoking any such certificate of registration or in denying an application may, within thirty days after the action by the director, or in the event no order has been entered either granting or denying the application within four months after the filing of the application, commence proceedings to obtain judicial review thereof by the circuit court of the first circuit by filing in the court a notice of appeal. The trial by the circuit court of any such proceeding shall be de novo. Proceedings for review by the supreme court may be had and taken in the same manner as is provided for a review of a judgment of a circuit court.

§482-10 Registration of name, title, or other mark or device on bottles, siphons, tins, kegs, or other containers. Any person engaged in manufacturing, bottling, selling, or distributing soda water, mineral or aerated water, porter, ale, beer, cider, ginger ale, milk, cream, or other beverages or mixtures in bottles, siphons, tins, kegs, or other containers with the person's name, title, or other mark or device branded, stamped, engraved, or etched, blown, impressed, or otherwise produced in or on such bottles, siphons, tins, kegs, or other containers used by the person, may file in the office of the director of commerce and consumer affairs a description of the name, title, or other mark or device so used by the person, and cause such description to be printed at least once in each week for two weeks successively in a newspaper published in the English language in the county where such manufacturing, bottling, selling, or distributing takes place or in some paper of general circulation published in the English language in Honolulu; whereupon, such name, title, or other mark or device shall be deemed registered.

§482-11 Unlawful traffic in bottles, etc., registered under section 482-10. It shall be unlawful for any person, other than the owner, to sell, buy, distribute, or otherwise dispose of or traffic in any bottles, siphons, tins, kegs, or other containers marked or distinguished with any name, title, or other mark or device of which a description has been filed and published as provided in section 482-10, without the written consent of the person whose name, title, or other mark or device is in or on such bottles, siphons, tins, kegs, or other containers. Any person violating this section shall be fined not more than \$500 or imprisoned not more than three days, or both.

§482-12 Unlawful use of milk bottles, etc.; penalty. It shall be unlawful for any person to use in the sale, offer for sale, exchange, or delivery of milk or cream or their products, or any other products, any bottle, jar, can, or other container upon which is branded, stamped, engraved, or etched, blown, impressed, or otherwise produced the name, title, or other mark or device of another person without the permission or consent of the other person. Any person violating this section shall be fined not more than \$500 or imprisoned not more than three days, or both.